

STATE MS.-DESOTO COME  
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Nov 26 1 44 PM '02

Prepared By:

Wal-Mart Stores East, Inc.  
 Sam M. Walton Development Complex  
 2001 S. E. 10<sup>th</sup> Street  
 Bentonville, AR 72716-0550  
 Attention: David Lynch  
 501-277-9476

BK 433 PG 8  
W.E. DAVIS CH. CLK.Please Return To

Zonia N. Veal  
 First National Financial Title Services, Inc.  
 3237 Satellite Blvd., Bldg. 300, Ste. 450  
 Duluth, GA 30096

ACCESS EASEMENT

**THIS ACCESS EASEMENT** is entered into as of the 30<sup>th</sup> day of OCT., 2002, by and between SAM'S REAL ESTATE BUSINESS TRUST, a Delaware business trust with an address of 702 S.W. 8<sup>th</sup> Street, Bentonville, AR 72716 ("Sam's"); and **SouthTrust Bank**, an Alabama banking corporation with an address of P.O. Box 2554, Birmingham, AL 35244 ("Grantee").

**WITNESSETH**

**WHEREAS**, Sam's is the owner of that certain tract or parcel of land situated in the City of Southaven, County of Desoto, State of Mississippi, identified as Tract 1 on the site plan attached hereto as Exhibit "A" ("Tract 1"); and

**WHEREAS**, Grantee will be by the time this instrument is recorded the owner of that 1.26 acre, more or less, tract or parcel of land in the same city, county, and state, which tract lies adjacent to Tract 1 and is identified as Tract 2 on Exhibit "A" and more fully described on Exhibit "B" ("Tract 2") which tract Sam's East, Inc. is current owner of and intends to convey fee simple title to Grantee by a warranty deed; and

**WHEREAS**, Grantee has requested from Sam's, and Sam's is desirous of granting to Grantee, a non-exclusive easement for pedestrian and vehicular ingress and egress over and across that portion of Tract 1 identified as the Access Area on Exhibit "A" and more fully described on Exhibit "C" ("Access Area").

**NOW THEREFORE**, in consideration of one dollar (\$1.00) and other good and valuable consideration, Sam's does hereby grant to Grantee a non-exclusive easement for vehicular and pedestrian ingress and egress over and across the Access Area for access to and from Tract 2, subject to the following terms and conditions to which the parties hereto do hereby agree:

1. Use of Access Area. The ingress and egress rights granted hereby may be used non-exclusively by, and are limited to, Grantee and its tenants and their respective customers and employees associated with the business operation to be located on Tract 2. Only passenger vehicles and light trucks and pedestrian traffic associated with Tract 2 may use the Access Area, but nothing herein shall be construed to limit or restrict ingress or egress associated with Tract 1 or any part thereof. Grantee shall not be allowed to use the Access Area for heavy truck traffic except as may be necessary for developing Tract 2 or delivering merchandise to the business operation to be located thereon.

2. Maintenance. (a) Sam's will maintain the Access Area. In the event Sam's fails to maintain or repair the Access Area, Grantee may do so at its sole expense, provided Grantee uses like or similar quality and type of materials originally installed on the Access Area, and further provided Grantee does not change the grade or elevation of the Access Area without the permission of Sam's. Any repair or maintenance performed within the Access Area must be preceded by a two-(2) week written notice to Sam's.

(b) Grantee shall, at its sole cost and expense pave any unpaved portion of the curb cut area from Tract 2 to the Access Area, and if, in the process of paving and developing the Access Area, Grantee encounters any irrigation equipment previously installed by Sam's in the Access Area, Grantee shall disconnect and relocate any such equipment at its cost. If Grantee encounters any utility lines under the Access Area, it shall encase said lines in order to protect it. If it is necessary for Grantee to remove trees or any other type of landscaping, it shall relocate it adjacent to the Access Area in a location acceptable to Sam's.

3. Damage to Access Area, or Other Improvements. If, in the process of developing Tract 2, Grantee damages, breaks, destroys, or in any way impairs the Access Area, or any other improvements of Sam's, Sam's in its sole discretion, may require Grantee to either: (i) restore at Grantee's sole cost and expense the Access Area, or Sam's improvements, to its original quality and condition; or (ii) Sam's may restore the Access Area, or improvements, and invoice Grantee for Sam's costs incurred restoring the damaged Access Area, or improvements; whereupon Grantee agrees to reimburse Sam's within thirty (30) days of receipt of an invoice for such expenses.

4. Indemnification. Grantee and Sam's shall indemnify and hold harmless the other from any damages or liability to persons or property that might arise from the use of the Access Area by Grantee or Sam's, their customers, suppliers, employees, and tenants or anyone else using the Access Area for ingress and egress to and from Tract 2. Grantee further agrees that Grantee will at all times during the duration of this easement maintain and pay for comprehensive general liability insurance affording protection to Sam's and Grantee naming Sam's as an additional insured on the policy or policies for a combined bodily injury and property damage limit of liability not less than \$2,000,000.00 for each occurrence. Grantee further agrees, upon request to deliver to Sam's a certificate or certificates from an insurance company or insurance companies satisfactory to Sam's evidencing the existence of such insurance and naming Sam's as an additional insured.

5. Curb Cuts. Grantee shall be entitled to install no more than two (2) thirty (30) foot curb cut(s) adjoining the Access Area as shown on the Grantee's Plan of Development as approved by Sam's.

6. Relocation. Sam's reserves the right in its sole and absolute discretion to modify or relocate the Access Area provided such modification or relocation does not materially restrict or prevent ingress and egress to and from Tract 2.

7. Public Grant. Nothing contained herein shall be used or construed as a grant of any rights to any public or governmental authority or agency.

8. Duration. The agreements contained herein and the rights granted hereby shall run with the titles to Tract 2 and the Access Area and shall bind and inure to the benefit of the parties hereto and their respective heirs, successors, and assigns.

9. Change of Ownership. In the event Grantee conveys or transfers title to Tract 2 to another party, Sam's shall be notified thereof within thirty (30) days thereafter. Sam's shall be provided the name and address of such transferee.

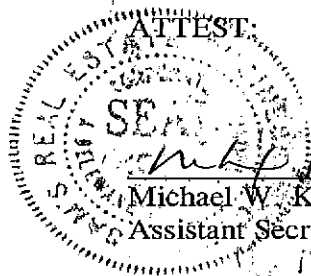
10. Effective Date. This instrument shall become effective conditioned upon and subject to the conveyance of Tract 2 by Sam's East, Inc. to Grantee to be evidenced by the recording of a warranty deed.

11. Headings. The headings of the paragraphs contained herein are intended for reference purposes only and shall not be used to interpret the agreements contained herein or the rights granted hereby.

(Signature page follows)

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first above written.

**SAM'S REAL ESTATE BUSINESS TRUST**



BY: Steve Nikel  
Steve Nikel  
TITLE: Director of Land Development

**TRUST ACKNOWLEDGMENT**

STATE OF ARKANSAS )  
 ) ss.  
COUNTY OF BENTON )

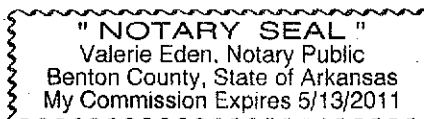
On this 30<sup>th</sup> day of October 2002, before me, the undersigned notary public in and for said County and State, personally appeared before me Steve Nikel to me personally known, who, being by me duly sworn, did say that he is Director of Land Development of **Sam's Real Estate Business Trust** and that the seal affixed to the foregoing instrument is the seal of said trust, and that said instrument was signed, sealed, and delivered in behalf of said trust by authority of its Board of Trustee's, and said Steve Nikel acknowledged said instrument to be the free act and deed of said trust.

WITNESS BY HAND and notarial seal subscribed and affixed in said County and State the 30<sup>th</sup> day of October, 2002.

Valerie Eden  
NOTARY PUBLIC

My Commission Expires:

May 13, 2011



IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first above written.

WITNESS OR ATTEST:

Sybil A. Blackwell

SOUTHTRUST BANK

BY: Michael R. Riley  
TITLE: Sr. Vice President

CORPORATE ACKNOWLEDGMENT

STATE OF Alabama )  
 ) ss.  
COUNTY OF Jefferson )

On this 12<sup>th</sup> day of November, 2002, before me, the undersigned notary public in and for said County and State, personally appeared before me Michael R. Riley to me personally known, who, being by me duly sworn, did say that he/she is Sr. Vice President of SouthTrust Bank and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed, sealed, and delivered in behalf of said corporation by authority of its Board of Directors, and said Sr. Vice President acknowledged said instrument to be the free act and deed of said corporation.

WITNESS BY HAND and notarial seal subscribed and affixed in said County and State the 12<sup>th</sup> day of November, 2002.

Joyce W. Morgan  
NOTARY PUBLIC

My Commission Expires:

10-25-05

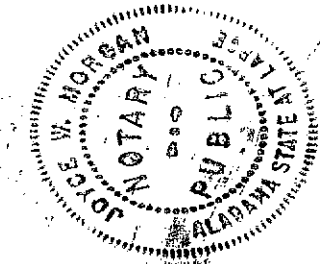
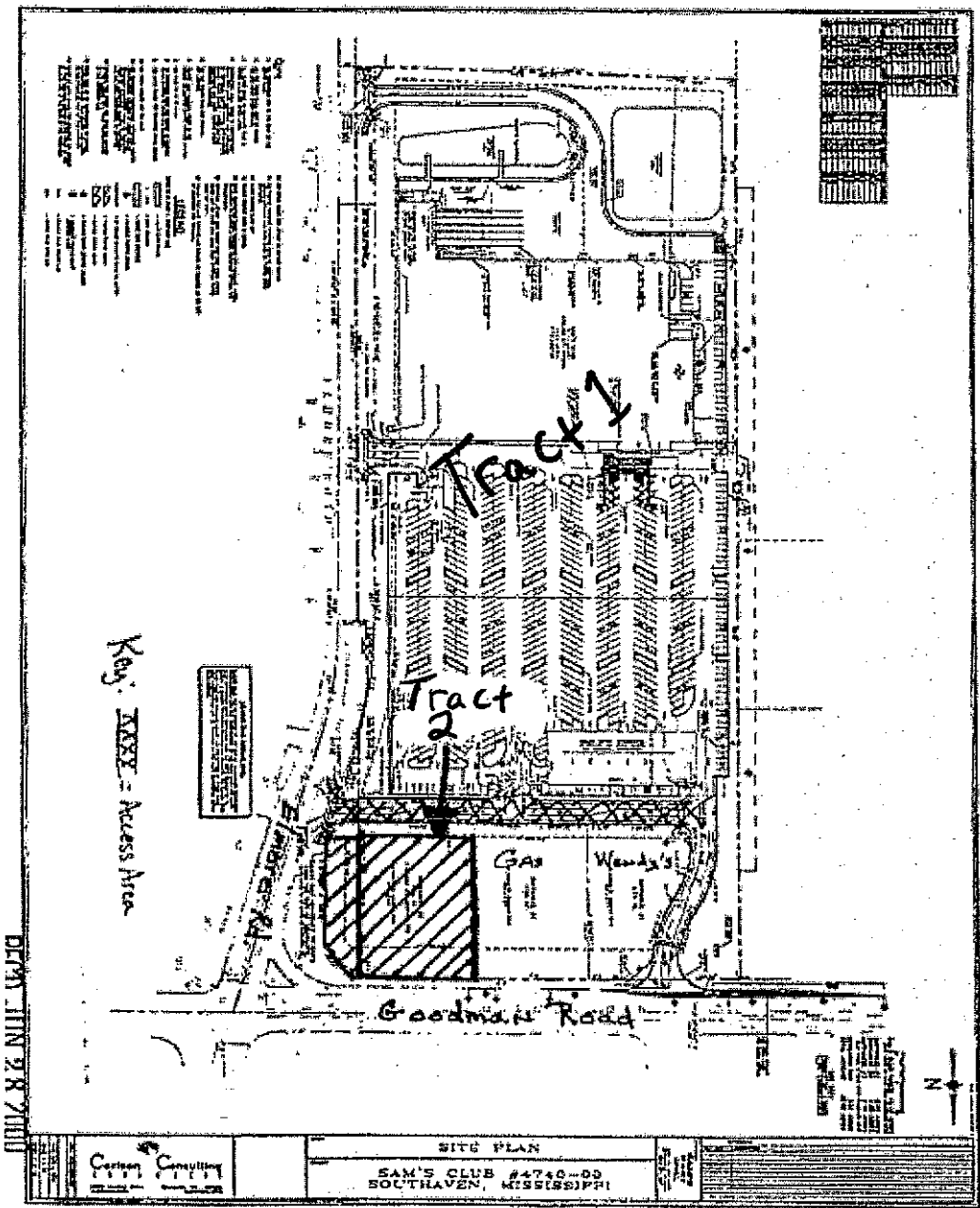


EXHIBIT "A"

Site Plan



## EXHIBIT "B"

**Tract 2**  
(Grantee's Tract legal description)

Being all of that certain parcel of land known as being Lot 1 of the Driver Commercial Subdivision as recorded at Plat Book 78, Page 16 at the Desoto County Chancery Court Clerk's Office, City of Hernando, County of Desoto, State of Mississippi, said parcel being located in a portion of the East  $\frac{1}{2}$  of the Northeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  and a portion of the West  $\frac{1}{2}$  of the Northwest  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 31, Township 1 South, Range 7 West, and being more particularly described as follows:

Commencing at the physical centerline intersection of Airways Boulevard and Goodman Road, said intersection being accepted as the Northwest corner of Section 31, Township 1 South, Range 7 West, City of Southaven, Desoto County, State of Mississippi, thence along the north line of said Section 31, North 89 degrees 44 minutes 20 seconds East, a distance of 2489.02' to a point; thence departing from said North line, South 00 degrees 03 minutes 21 seconds West a distance of 57.43' to a found  $\frac{1}{2}$ " iron pin w/cap set in concrete, said iron pin accepted as being the northwest corner of Lot 1, Driver Commercial Subdivision, First Revision as recorded in Plat Book 78, Page 16 at the Desoto County Chancery Court Clerk's Office, City of Hernando, County of Desoto, State of Mississippi, said found iron pin being the TRUE POINT OF BEGINNING; thence along the south Right of Way line of Goodman Road (60' from centerline) and the north line of said Lot 1 in a southeasterly direction along the arc of a curve to the right having a radius of 17128.74' (Long Chord = South 89 degrees 24 minutes 21 seconds East, 163.06') an arc distance of 163.06' to a found  $\frac{1}{2}$ " iron pin with plastic cap set in concrete; thence continuing along said south right of way line, South 89 degrees 07 minutes 59 seconds East, passing a found buried concrete right of way monument at 6.80 feet, but in all a total distance of 25.26' to a found  $\frac{1}{2}$ " iron pin with plastic cap set in concrete; thence South 32 degrees 47 minutes 35 seconds East a distance of 63.71' to a found buried concrete right of way monument in the west Right of Way line of Elmore Road (Right of Way Varies); thence South 01 degrees 09 minutes 22 seconds West, along said west right of way line, a distance of 169.24' to a found  $\frac{1}{2}$ " iron pin with plastic cap in set concrete, said iron pin being the easternmost northeast corner of Lot 4 of said subdivision and the most easterly southeast corner of said Lot 1, thence along a north line of said Lot 4, and the most easterly south line of said Lot 1, South 57 degrees 40 minutes 18 seconds West, a distance of 58.94' to a found  $\frac{1}{2}$ " iron pin with plastic cap set in concrete; thence along the south line of said Lot 1, North 89 degrees 56 minutes 39 seconds West, a distance of 169.85' to a found  $\frac{1}{2}$ " iron pin with plastic cap set in concrete, said iron pin being the southeast corner of Lot 2 of said subdivision and the southwest corner of said Lot 1; thence North 00 degrees 03 minutes 21 seconds East, along the east line of said Lot 2 and the west line of said Lot 1, a distance of 256.19' to said TRUE POINT OF BEGINNING

Said described Lot 1 containing 54,797 square feet or 1.258 Acres more or less.

**Access Area**  
(Part of Tract 1 legal description)

**Description of Property**

Being all of that certain parcel of land known as being the Access Easement for Use by Lots 1, 2, & 3, of the Driver Commercial Subdivision, First Revision as recorded at Plat Book 70, Page 16 at the Deato County Chancery Court Clerk's Office, City of Hernando, County of Deato, State of Mississippi, said parcel being located within a portion of the East 1/2 of the Northeast 1/4 of the Northwest 1/4 and a portion of the West 1/2 of the Northwest 1/4 of the Northeast 1/4 of Section 31, Township 1 South, Range 7 West, and being more particularly described as follows:

Commencing at the physical centerline intersection of Airways Boulevard and Goodman Road, said intersection being accepted as the Northwest Corner of Section 31, Township 1 South, Range 7 West, City of Southaven, Deato County, State of Mississippi, thence along the north line of said Section 31, North 89 degrees 44 minutes 20 seconds East, a distance of 2091.97' to a point; thence departing from said North line, South 00 degrees 02 minutes 39 seconds West a distance of 56.93' to a point in the south Right of Way line of Goodman Road, (Right of Way varies), being the northwest corner of Lot 4, of The Driver Commercial Subdivision, First Revision as recorded at Plat Book 70, Page 16 at the Deato County Chancery Court Clerk's Office, City of Hernando, County of Deato, State of Mississippi, thence along the south Right of Way line of Goodman Road (60' from centerline) being the northwesterly north line of said Lot 4, North 89 degrees 38 minutes 01 second East, a distance of 56.94' to a point, said point being the TRUE POINT OF BEGINNING; thence continuing along the south line of said Goodman Road being the most northwesterly north line of said Lot 4, and a north line of the Access Easement, North 89 degrees 38 minutes 01 second East, a distance of 106.21' to a point, said point being the northwest corner of Lot 3 of said Driver Commercial Subdivision; thence departing from said south Right of Way line along an east line of said Easement and the west line of said Lot 3, the following six courses: South 45 degrees 19 minutes 31 seconds West, a distance of 42.95' to a point; thence in a non-tangent southwesterly direction along the arc of a curve to the right having a radius of 221.50' (long chord bearing = South 17 degrees 36 minutes 53 seconds West, long chord distance = 104.63') an arc distance of 105.63' to a point of tangency; thence South 31 degrees 16 minutes 36 seconds West, a distance of 5.17' to a point or curvature; thence in a southwesterly direction along the arc of a curve to the left having a radius of 176.50' (long chord bearing = South 15 degrees 39 minutes 59 seconds West, long chord distance = 96.07') an arc distance of 97.27' to a point of tangency (found iron pin); thence South 00 degrees 03 minutes 21 seconds West, a distance of 8.76' to a point (found iron pin); thence South 44 degrees 56 minutes 39 seconds East, a distance of 28.28' to a point (found iron pin); thence along a north line of said Easement and the south line of said Lot 3, the south line of Lot 2 of said subdivision, and a portion of the south line of Lot 1 of said subdivision, and a north line of said Lot 4, South 89 degrees 56 minutes 39 seconds East, passing a found iron pin at 304.50', but in all a distance of 474.35' to a point (found iron pin); thence continuing along a north line of said Easement, a north line of said Lot 4, and a south line of said Lot 1, North 57 degrees 40 minutes 16 seconds East, a distance of 58.94' to a point (found iron pin) in the west Right of Way of Elmire Road (Right of Way Varies); thence along an east line of said Easement, an east line of said Lot 4, and the west line of Elmire Road, South 15 degrees 52 minutes 01 second West, a distance of 76.46' to a point; thence along the south line of said Easement, North 89 degrees 58 minutes 59 seconds West, a distance of 573.29' to a point; thence along the west line of said Easement the following five courses: North 00 degrees 03 minutes 21 seconds East, a distance of 70.76' to a point of curvature; thence in a northeasterly direction along the arc of a curve to the right having a radius of 226.50' (long chord bearing = North 15 degrees 39 minutes 58 seconds East, long chord distance = 122.98') an arc distance of 124.51' to a point of tangency; thence North 31 degrees 16 minutes 36 seconds East, a distance of 5.17' to a point of curvature; thence in a northeasterly direction along the arc of a curve to the left having a radius of 171.50' (long chord bearing = North 17 degrees 36 minutes 57 seconds East, long chord distance = 81.01') an arc distance of 81.76' to a point; thence in a non-tangent direction, North 44 degrees 40 minutes 29 seconds West, a distance of 36.67' to said POINT OF BEGINNING.

Said described Access Easement containing 39,298 square feet or 0.902 Acres more or less.